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INTOXICATED DRIVERS OF COMMON CARRIERS

ORIGINAL
COMPLETED

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 850

A BILL TO CREATE A FEDERAL CRIMINAL OFFENSE FOR OPERATING OR DIRECTING THE OPERATION OF A COMMON CARRIER WHILE INTOXICATED OR UNDER THE INFLUENCE OF DRUGS

SEPTEMBER 30, 1985

Serial No. J-99-58

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INTOXICATED DRIVERS OF COMMON CARRIERS

MONDAY, SEPTEMBER 30, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to call, at 2:15 p.m., in room 226 of the Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Specter and McConnell.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

This afternoon, the Committee on the Judiciary begins consideration of S. 850, which creates a Federal criminal offense for operating or directing the operation of a common carrier while intoxicated or under the influence of drugs.

It is my hope that this hearing will properly emphasize the importance of responsible conduct by common carriers throughout our Nation and focus on the need for criminal sanctions at the Federal level to address this issue.

Recent figures released by the Department of Transportation reveal that, since 1975, 48 train accidents have occurred due to employees impaired by drugs or alcohol. These accidents have claimed the lives of 37 people, caused at least 80 injuries, and destroyed more than $34 million worth of property.

According to Department of Transportation officials, this is only the tip of the iceberg: The problem being far more widespread and serious than the statistics indicate.

The responsibility incumbent upon operators of motor vehicles while driving on the roads and highways is reflected in the criminal code of virtually every State, making it unlawful to drive under the influence of drugs or alcohol. At the very least, common carriers should be held to the same standard of accountability.

Common carriers should appropriately face criminal sanctions when they jeopardize the safety of the public by working while under the influence of drugs or alcohol. Indeed, common carriers have always been held to a stricter standard of care under negligence claims at the common law.

This stricter scrutiny is because of their heightened responsibility to the public. Common carriers are holding themselves out to transport people and goods, and are entrusted with the safety of the public in that transportation.

The Federal interest arises when this transportation occurs across State lines; and, accordingly, this bill addresses interstate

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common carriers. There are currently no Federal criminal laws which specifically address the use of drugs or alcohol by persons while they are operating or directing the operation of common carriers.

The Department of Transportation has promulgated new regulations to strengthen the enforcement of rule G of the railroad industry, which has long been the standard that prohibits the use of alcohol and drugs on the job. Rule G has proved ineffective over the years and the new regulations issued by the Department of Transportation respond to the sharp increase in alcohol- and drug-related train accidents.

I commend the recent action taken by the Department of Transportation on this vital issue. Administrative regulations are a step in the right direction. However, I firmly believe that Federal criminal sanctions are necessary and proper to address this situation.

Specifically, S. 850 would amend title XVIII of the United States Code by adding a new chapter. The bill creates a Federal offense for operating or directing the operation of a common carrier—such as passenger and freight trains, airplanes, buses, and ships—while intoxicated or under the influence of drugs. The penalty would be a fine of up to $10,000 or imprisonment up to 5 years, or both.

I believe this legislation would be an effective deterrent and reflects a common understanding throughout the Nation that driving while under the influence of drugs or alcohol will not be tolerated. Federal action to make it a criminal offense for this type of inexcusable activity is long overdue.

We have several distinguished witnesses with us today. We welcome you and look forward to hearing your testimony on this important issue.

I ask that you make your entire written statement available for the record and limit your summary remarks to 5 minutes.

Our first witness is Barry Sweedler, Director of the Bureau of Safety Programs of the National Transportation Safety Board. He is appearing on behalf of the Chairman, Jim Burnett, who was unexpectedly called away over the weekend to investigate the tragic plane crash in Jenkinsburg, GA, that killed all 17 people onboard.

The National Transportation Safety Board has been in the forefront of efforts to reduce the threat that alcohol and other drug abuse poses to our transportation system.

Mr. Sweedler, we welcome you here today to address the issue of safety regulations and prohibition of alcohol and drug use among the various common carriers.

Senator McConnell from Kentucky is here. Senator, do you have an opening statement?

Senator MCCONNELL. In the interests of time, Mr. Chairman, I would like to insert my opening statement in the record and proceed with the witnesses.

Thank you.

The CHAIRMAN. Thank you, Senator.

Your statement and a copy of S. 850 will be placed in the record at this point.

[Aforementioned follows:]

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OPENING STATEMENT OF SENATOR MITCH MCCONNELL

Mr. Chairman, I commend your for your leadership in introducing S. 850, a bill that would create a Federal criminal offense for operating a common carrier while intoxicated or under the influence of drugs. It is shocking to know that freight trains are so frequently being operated by crews who are simply unable to exercise the degree of caution and skill called for because of the influence of drugs and alcohol.

But, as you know, Mr. Chairman, it's true. In fact, since 1975 there have been at least 48 separate train accidents that have been caused in whole or in part by the presence of drugs or alcohol. These accidents have caused a tragic loss of life and an unnecessary loss of property and productivity.

I'm pleased to see that your bill would, for the first time, create some meaningful penalties for those who are responsible for this carnage. While I'm not usually interested in the creation of new and perhaps unnecessary Federal causes of action, this is one instance in which only a Federal approach has any real likelihood of success. Because of the vast distances common carriers travel, and because of the large number of jurisdictions through which they travel, it would be years, if ever, before the States could effectively solve this problem.

I'm looking forward to the testimony of the witnesses, and look forward to supporting this legislation as well.

Thank you, Mr. Chairman.

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II

Calendar No. 402

99TH CONGRESS
1ST SESSION

S. 850

To create a Federal criminal offense for operating or directing the operation of a common carrier while intoxicated or under the influence of drugs.

IN THE SENATE OF THE UNITED STATES

APRIL 3 (legislative day, FEBRUARY 18), 1985

Mr. THURMOND (for himself, Mr. GRASSLEY, Mr. LAXALT, Mr. MATHIAS, Mr. LUGAR, Mr. ROTH, Mr. DENTON, and Mr. HEFLIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 14 (legislative day, NOVEMBER 12), 1985

Reported by Mr. THURMOND, without amendment

A BILL

To create a Federal criminal offense for operating or directing the operation of a common carrier while intoxicated or under the influence of drugs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part I of title 18, United States Code, is amended by inserting after chapter 17 the following:

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"CHAPTER 17A—COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

"Sec.
"341. Definitions.
"342. Operation of a common carrier under the influence of alcohol or drugs.
"343. Presumptions.

"§ 341. Definitions

"As used in this chapter the term 'common carrier' means a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

"§ 342. Operation of a common carrier under the influence of alcohol or drugs

"Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisoned not more than five years or fined not more than $10,000, or both.

"§ 343. Presumptions

"For purposes of this chapter—

"(1) an individual with a blood alcohol content of .10 or more shall be conclusively presumed to be under the influence of alcohol; and

"(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to affect the perception, mental processes, or motor functions of the average individual.".

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(b) The table of chapters for part I of title 18, United States Code, is amended by adding after the item for chapter 17 the following:

"17A. Common Carrier Operation Under the Influence of Alcohol or Drugs..... 341".

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The CHAIRMAN. You may proceed now, Mr. Sweedler.
Mr. SWEEDLER. Thank you, Mr. Chairman.

STATEMENT OF BARRY SWEEDLER, DIRECTOR, BUREAU OF SAFETY PROGRAMS, NATIONAL TRANSPORTATION SAFETY BOARD, ACCOMPANIED BY JOHN V. MOULDEN, ALCOHOL PROGRAM COORDINATOR

Mr. SWEEDLER. I'm pleased to be here this afternoon to present testimony on behalf of the National Transportation Safety Board on a transportation safety issue of vital importance: That is the problem of alcohol- and other drug-impaired vehicle operators in all modes of transportation.

As you mentioned, Mr. Chairman, our Chairman, Jim Burnett, was called out to the aviation accident in Georgia and could not be with us. He had looked forward to this hearing.

The CHAIRMAN. You can summarize your statement now.

Mr. SWEEDLER. Certainly.

With me today is John Moulden, our Alcohol Program Coordinator.

That there are drunk and drugged individuals behind the controls of our trains, trucks, subways, buses, and boats, and planes, the Safety Board has little doubt. We have seen firsthand the consequences. We have sorted through the wreckage and debris.

Let me begin by describing the confusing and inconsistent way in which the regulations deal with alcohol and drug impairment in the various modes of transportation with which the Safety Board deals on a daily basis.

In all modes, operating under the influence of alcohol and drugs is prohibited, but what that means differs from one transportation mode to another. In aviation, the FAA rule sets 0.04 percent BAC as the level for flying and does not permit alcohol consumption within 8 hours of flying.

In trucking, the Bureau of Motor Carrier Safety has a 4-hour rule and sets no specific BAC level. The rule for railroads is also set at 0.04 percent BAC, while the rules in the marine mode are still under development.

The Safety Board is concerned about the level of 0.04 percent and we have expressed our comments to both the FRA and the FAA in the rulemaking process. In fact, a recent study shows impairment as low as 0.015 percent.

Mr. Chairman, transportation safety requires that all professional drivers, pilots, engineers, and crew, whether carrying missiles, methyl isocyanate—the chemical involved in the Bhopal accident—or passengers must be alcohol and drug free while on the job.

Therefore, we would recommend broadening the scope of this bill to include common carriers in all modes of transportation including interstate trucking and rapid rail transit.

Lest there be any doubt about the seriousness of the problem and the need for an effective response, let me recount just a few examples of the consequences of drug and alcohol in transportation.

In the rail area, shortly before dawn on December 28, 1982, 43 cars of an Illinois Central Railroad Co. freight train derailed near Livingston, LA; 14 of the derailed cars carried hazardous materials.

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As a result of the release of the hazardous materials and ensuing fire, approximately 3,000 people who lived within 5 miles of the accident site were evacuated for periods as long as 2 weeks. Clean up of the site took more than a year. Property damage has been estimated to run into the tens of millions of dollars.

During the Safety Board's investigation of this accident, we found evidence that crew members had consumed alcoholic beverages before reporting for duty and while on the job. The Board was able to conclude that the engineer had consumed at least 14 to 16 ounces of 86-proof bourbon whiskey prior to boarding the train, and there was credible evidence that he and his brakeman continued to drink even after boarding the train.

But even more incredible was the fact that he had turned the controls over to a railroad clerk who was operating the train at the time of the crash.

Alcohol and drugs are also a problem in rapid rail transit operations. I mention that because rapid rail transit would not be covered under the new rules that have recently been promulgated by the Federal Railroad Administration.

One tragic example took place in Chicago in 1977 when an accident occurred. A train actually fell off the elevated Loop, and plunged to the street; 11 persons were killed and there was evidence of marijuana use in that accident.

In the marine mode, a ferry boat in 1976 was crossing the Mississippi when it was struck by a tanker. The ferry capsized; 72 passengers and the crew of 5 were killed. A whiskey bottle was found in the wheelhouse and the BAC level of the boatmaster was 0.09, which is below the legally impaired level not only of current law but the level in the legislation that is now being proposed.

In trucking, in the early morning hours of a day in December 1982, 4 miles east of Los Banos, CA, a truck-tractor semitrailer loaded with military cargo of 18 surface-to-air missiles drifted off the right edge of State Route 52, struck and sheared a utility pole, overturned onto its right side and came to rest 120 feet from where it left the road.

A bundle of nine missiles broke loose and spilled out onto the ground. Fortunately, very fortunately, there was no fire.

The truck driver admitted that he had been drinking and had fallen asleep while driving. He pleaded guilty to reckless driving with alcohol involvement. When we checked his records, we found that he had 14 other traffic convictions.

In the aviation area, a Japan Airlines DC–8, in 1977, was flying a cargo flight. Shortly after takeoff it crashed at Anchorage International Airport. Three crew members and two cargo handlers died, and the aircraft was destroyed.

The Board determined that probable cause was a stall caused by the pilot whose blood alcohol concentration may have been as high as 0.30 percent. That's nearly three times the legal intoxication limit on our highways and seven times the limit the FAA has set as the presumptive level in aviation.

Incredibly, after boarding his plane, this pilot got lost on the taxiway and went to the wrong runway; and yet no one, including his crew, intervened to stop him.

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Are these isolated cases, accidents that may be dramatic but really prove nothing? We don't think so.

Since 1982, the Board has investigated 14 rail accidents in which alcohol or other drugs were either a contributing factor or a primary cause. These accidents claimed 18 lives and an estimated $31 million in damage.

In six of the rapid rail transit accidents investigated or under investigation by the Board, alcohol or other drugs were involved; 16 persons were killed and 500 persons were injured, and property damage was almost $6 million.

We believe there is no level of alcohol or other impairing drugs in the body that can be conclusively presumed safe. The NTSB has recommended to the FAA and the FRA in both of their respective rulemakings on this issue that the allowable level for air and train crew members should be no measurable alcohol, not 0.04 as these rules now specify.

But I would go even further. There should be a common consistent level of zero BAC specified for all commercial vehicle operators in all modes of transportation: not 0.04 in rail and air, and 0.10 on the highway and no specified level in marine.

Safety would also be served by a consistent specification of what impairing substances are addressed and a precise definition of what constitutes impairment. Achieving this needed consistency across modes should also be an objective of this legislation.

In summary, Mr. Chairman, we believe that the drunk or drugged operator is one of the greatest threats to transportation safety. It is my urgent hope that this measure being considered today will serve as an added deterrent to all those in our transportation system who continue to endanger the lives and property of others while impaired by alcohol or other drugs.

The American people deserve no less than the most highly-trained and clear-headed men and women at the throttle of this Nation's transportation system.

The Safety Board welcomes your efforts, Mr. Chairman, and those of this committee toward achieving this vital goal. Again, thank you for the opportunity to testify this afternoon.

The CHAIRMAN. Thank you very much.

You have brought some startling figures here to our attention.

Mr. Sweedler, in your testimony you referred to a DC–8 cargo flight that crashed shortly after takeoff at Anchorage International Airport. You stated that the captain was obviously impaired, as he was physically helped from his cab to the airplane. Yet no one intervened to stop him.

Who is available at the airport in this type of situation to exercise some authority and prevent an obviously impaired pilot from flying an airplane?

Mr. SWEEDLER. In a situation like this, there were a number of people who could have interceded to stop this pilot from flying, or even approaching and getting on the airplane.

Those in the best position to do that would be the actual company, the Japan Airlines, because the pilot would undoubtedly have to check in with the company officials. He would have to receive information about the weather and other pertinent information about the flight.

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The more incredible part is his own fellow crew members who, under a program that the FAA, I understand, sponsors should have prevented that individual from flying. In fact, the cab driver was so overly concerned about the condition of the pilot he attempted to reach airport officials, but he did not remember or did not know which airline the captain worked for.

By the time he got through to the proper officials, the plane had already taken off and crashed.

The CHAIRMAN. Most airports have security. Is there any rule or regulation that the security people are responsible in any way, or are they merely responsible for the security of the passengers with regard to bombs and things of that kind?

Mr. SWEEDLER. Not to my knowledge, Mr. Chairman. There would not be any role of the security officers.

The CHAIRMAN. Then the security police don't have anything to do with the pilots.

Mr. SWEEDLER. No, sir.

The CHAIRMAN. In other words, each airline polices itself.

Mr. SWEEDLER. To a great extent, and they are overseen by the FAA.

The CHAIRMAN. Do you think that's adequate or do you think further steps should be taken?

Mr. SWEEDLER. Well, we would like to see, maybe, a little more oversight on the part of the FAA in areas such as this.

The CHAIRMAN. You mean, FAA ought to take more oversight or each airline ought to be required to take it?

Mr. SWEEDLER. Well, each airline certainly should be required to do it and they should be followed up on what they do by the FAA.

The CHAIRMAN. Mr. Sweedler, you expressed some doubt in the enforcement of the recent Federal Aviation Administration rule of the use of alcohol or drugs as dependent on every State having the authority to arrest and test a pilot suspect of flying while intoxicated.

Doesn't the approach of this legislation solve that problem?

Mr. SWEEDLER. I think it would certainly help; but the enforcement will have to, to a great extent, need the cooperation of the local- and State-level police authorities because they would be the first to appear at the scene of an accident or be available or around airports to help with the testing of the individuals that might be thought or suspected of being under the influence.

The CHAIRMAN. The National Transportation Safety Board recommends that no blood alcohol content be tolerated in the operators of common carriers.

Is this a practical suggestion in view of the fact that some people ordinarily have a trace of blood alcohol in their system even if they have not been drinking? How do you see enforcement of such a strict standard?

Mr. SWEEDLER. I think the main reason that the Safety Board calls for no BAC is we feel that the message should be loud and clear that any alcohol ingested by an operator will not be tolerated.

In fact, it may even be easier to enforce a law of no alcohol than a low-set level because a low level, such as 0.04, could give the wrong message where an operator might say, "Well, 0.04—that

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means I can have a few beers. Even if I get caught, I'm still below 0.04 and I won't be in violation of the rules."

We believe strongly that the message should be loud and clear that no alcohol should be tolerated.

The CHAIRMAN. I believe most States have a 0.10, don't they, on the test as to whether or not they are under the influence?

Mr. SWEEDLER. Yes.

The CHAIRMAN. Well, you don't recommend that here?

Mr. SWEEDLER. Well, I think that that is a level that is quite high when we consider impairment. Impairment takes place at much, much lower levels of alcohol.

I think the 0.10 has evolved more as a politically expedient level in the States than an actual impairment level. In fact, in most foreign countries the level is lower.

The CHAIRMAN. In your written testimony, you state that this legislation should state specifically which impairing substances are to be prohibited.

What substances would you include, and would not a broad definition be more practical?

Mr. SWEEDLER. May I ask Mr. Moulden to respond?

Mr. MOULDEN. Mr. Chairman, I think a broad definition would be most appropriate. The way, for example, the uniform vehicle code deals with it, employs language to the effect that you shall not operate while under the influence to a degree which renders one incapable of safe operation.

Our point was that in BMCS we are addressing certain specific drugs, that is, amphetamines and barbiturates. In other regulations, we broadly refer to controlled substances.

I think there needs to be some commonality. Perhaps a rulemaking action could define the specific substances.

There is also the problem that prescription drugs, too, can be impairing. It's not just the fact that it's illegal substances that can be a danger to transportation safety.

The CHAIRMAN. I think those are all the questions I have now. Thank you, gentlemen, for appearing.

Is there anything else you would like to tell the committee that would be helpful to us?

Mr. SWEEDLER. We would be more than pleased to work with the committee and the staff in any way you would like, Mr. Chairman, to help in this matter.

The CHAIRMAN. I wish you would work with the staff all you can. This is a very important matter.

Mr. SWEEDLER. We certainly agree.

The CHAIRMAN. The very figures that you brought out today show that so many people have been killed because some operators of common carriers were under the influence of alcohol or drugs.

I think that shows a need for the bill right there, doesn't it?

Mr. SWEEDLER. Yes, sir.

The CHAIRMAN. Anything else?

Mr. SWEEDLER. No thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator SPECTER. I would like to submit three questions for the record if I may have them propounded for answer at a later time.

Thank you very much, Mr. Chairman.

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The CHAIRMAN. Senator Specter's questions will appear in the record.

[Aforementioned follows:]

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National Transportation Safety Board

Washington, D.C. 20594

October 16, 1985

Questions Submitted by Senator Specter

Question: What is the incidence of accidents to property and personal injury from common carrier accidents resulting from drugs or alcohol?

Response: One of the real handicaps that the Safety Board faces in determining the role of alcohol and other drugs in transportation is the lack of accurate and complete accident record systems. Interstate truck and bus operations are a case in point: The Bureau of Motor Carrier Safety, the agency responsible for this area, relies on carrier-supplied information to monitor the incidents of alcohol and other drug use in crashes. This data source shows only 0.6 percent of heavy truck fatalities involving alcohol and 0.5 percent of injuries. Yet, based upon independent research studies and the National Highway Traffic Safety Administration's Fatal Accident Reporting System (FARS), anywhere from 16 percent to 36 percent of fatal truck crashes involve alcohol.

As good as it is, the FARS system is only as accurate and complete as the information that individual states provide on highway crashes in their state. The Safety Board has determined that, nationwide in 1983 FARS received alcohol test reports on only 56.7 percent of all fatally injured drivers.

There are similar or worse problems in the other modes. The best we can do to answer this question is to recount what information the Safety Board has gathered from our own investigations and other sources: In rail, the National Transportation Safety Board has investigated (since June 1982) 14 crashes in which alcohol or other drugs was either a contributing factor or a primary cause. These crashes claimed a total of 18 lives and economic damage exceeding $31 million. In six rail rapid transit crashes we have investigated which involved alcohol or other drugs, 16 deaths resulted, more than 499 injuries occurred, and property damage of $5.8 million was incurred.

A further indication of the extent of the alcohol problem in the rail industry can be seen from the results of the Railroad Employee Assistance Project (REAP) survey conducted by the Federal Railroad Administration in 1978. In this survey several thousand employees on six railroads defined the extent of the alcohol problem in the industry. The REAP study produced the following statistics:

-- 23 percent of railroad operating personnel were "problem drinkers."

-- 5 percent of workers reported to work "very drunk" or got "very drunk" on duty at least once in the study year.

-- 13 percent of workers reported to work at least a "little drunk" one or more times during the survey period.

-- 13 percent of operating employees drank while on duty at least once during the study year.

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Scheduled commuter and air-taxi aviation operations have resulted in at least 20 alcohol-involved crashes which caused some 49 deaths since 1975. In commercial marine operations there is very little information collected; however, in the ferry boat crash cited in our testimony 72 passengers and five crew members died.

Question: Why are state laws governing the use of drugs and alcohol while operating a motor vehicle insufficient for prosecution of persons operating common carriers?

Response: If we limit consideration of motor vehicles to the highway mode, the Safety Board has seen numerous instances where truck and bus operators have had extensive records of motor vehicle violations (including DWIs and vehicular homicides) in various states but have eluded detection by the BMCS or operating companies and have been allowed to drive. The primary reasons for these screening system failures include indifference by some operating companies, failure to use the National Driver Register to investigate driver histories in other states, and the lack of capability by the BMCS to adequately oversee the operations of the thousands of truck and bus companies in this country. If we assume that a dramatic improvement in this screening system is unlikely in the near future, then we must look to an increase in the penalties to create a deterrent to driving while impaired.

Without an adequate "deterrence" system to prevent alcohol and other drug impaired operators from getting behind the wheel, the effectiveness of current state laws and the capability of state and local police alone to apprehend impaired drivers on the roads will continue to be insufficient to reduce dramatically this problem.

Question: Do you believe that criminal penalties also would be appropriate for the carrier itself, where there is demonstrated a failure to supervise which would amount to criminal negligence?

Response: I believe, in the instance where a carrier was culpably negligent in his supervision of operations, that criminal penalties are in order.

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The CHAIRMAN. Our next witness is Philip W. Haseltine, Deputy Assistant Secretary for Policy and International Affairs, Department of Transportation.

Mr. John Riley, Administrator of the Federal Railroad Administration, we are glad to have you, too.

Mr. Haseltine will bring us up to date on the current state of affairs and proposed regulations dealing with alcohol and drug use among the common carriers.

Mr. Riley will specifically address alcohol and drug abuse within the railroad industry and steps which his office has taken through its rulemaking authority to control this problem.

You gentlemen may proceed.

STATEMENT OF PHILIP W. HASELTINE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. HASELTINE. Thank you, Mr. Chairman. I'm pleased to be here to present the views of the Department on Senate bill 850, legislation to make it a Federal criminal offense to operate a common carrier while under the influence of alcohol or drugs.

Administrator Riley will speak specifically about very recent comprehensive action that FRA has taken in the rail area.

The Department is in complete agreement with the intent and objectives of Senate bill 850. Alcohol and drug abuse by persons involved in transportation, whether common carrier or private vehicle, presents an unacceptable public safety risk.

We are determined to eliminate such use in all transportation modes.

Perhaps the Department's most visible programs in this area address drunk drivers. Reducing the number of accidents, deaths, and injuries caused by drunk drivers has become a major national safety priority.

I am sure you are familiar, Mr. Chairman, with the Department's high-profile and high-visibility activities in this particular area.

Drug as well as alcohol abuse by transportation operators in all modes is also a priority safety issue for the Department. Earlier this year, the Secretary established a departmental working group to examine the problem in depth.

On the working group's recommendation, we have initiated a research project designed to: One, identify licit and illicit drugs that may present transportation safety problems; two, survey the state of knowledge regarding the specific effects of these drugs on transportation operations; three, review methods to detect and measure drug levels in individuals; and, four, assess the quality and limitations of available data and information.

We expect this project to provide vital information for further development of drug countermeasure programs for all modes; but, today, I would like to outline some of the Department's regulations and policies governing drug and alcohol abuse in commercial transportation, and then discuss the proposed legislation in the context of our experience in this area.

Senator SPECTER. Mr. Chairman.

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The CHAIRMAN. The distinguished gentleman from Pennsylvania.

Senator SPECTER. Mr. Chairman, I regret that I cannot stay longer at this hearing, but I would like leave at this time.

I commend the Chair for convening this very important hearing. Other commitments prevent my being here to hear the testimony in full, but I will follow the hearing closely.

I thank the Chair.

The CHAIRMAN. You may proceed.

Mr. HASELTINE. Thank you, Mr. Chairman.

In the area of air transportation, the Federal Aviation Administration's regulations for air carriers apply to pilots, flight engineers, and other crew members. These regulations prohibit anyone from acting as a crew member while taking drugs, including prescription or over-the-counter drugs that affect faculties contrary to safety or while under the influence of alcohol.

Crew members may not work flights within 8 hours of consuming any alcoholic beverage. In addition, FAA has recently adopted a rule forbidding persons to act as crew members with a blood alcohol content of 0.04 percent or higher.

Failure to comply with any one of the three preceding regulatory requirements can result in revocation of a crew member's license or FAA certification, or an assessment of civil penalties up to $1,000. Multiple criteria are needed to meet all types of alcohol-related problems.

In addition, any recent conviction under Federal, State, or local drug laws can lead to revocation of a license or certification.

The Secretary has recently submitted legislation proposing to increase civil penalties authorized for all air carrier safety violations from $1,000 to a maximum of $10,000 per violation.

The FAA requires pilots to have regular medical examinations. These are for commercial pilots once a year, for airline pilots once every 6 months. If a history of drugs dependence or alcoholism is discovered, FAA can and does disqualify the pilot.

FAA also uses motor vehicle DWI convictions as an indication of possible drug or alcohol problems.

The FAA recently issued a notice of proposed rulemaking that would require pilots or crew members to submit to an alcohol or drug test at the request of a State or local law enforcement officer who has reason to suspect that the crew member may be under the influence of alcohol or drugs. Refusal to take such a test would constitute grounds for revocation of FAA certification or imposition of a civil penalty.

This testing requirement could facilitate enforcement of the FAA prohibitions against alcohol and drug use, and could serve further to deter use by air carrier crews.

The rail area I will leave to my colleague, Administrator Riley, who will discuss that in detail in a moment.

In the highway area, Mr. Chairman, the Federal Highway Administration regulations applicable to interstate truck and bus drivers prohibit consumption of alcoholic beverages within 4 hours of reporting to work and prohibit possession or use of DEA's schedule 1 controlled substances—those with the greatest potential for abuse and no accepted medical use in the United States—on the job.

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Regulations require that truck and bus drivers undergo a medical examination every 2 years. If current clinical diagnosis shows addiction, then the driver is disqualified.

In addition, a driver would be disqualified for 1 year if he is convicted of driving while under the influence of alcohol, a schedule 1 drug, an amphetamine or narcotic drug or derivatives of amphetamines or narcotics. Violations of the FHWA regulations can subject drivers to civil penalties of up to $2,500 or to criminal sanctions.

Alcohol and drug use by drivers is a major concern of State and local governments. Thirty-nine States have established 0.10 percent BAC at or above which it is illegal to drive a motor vehicle; 6 States have established 0.08 percent BAC at which a driver is presumed to be under the influence; and 6 States have established BAC levels ranging from 0.05 to 0.08 percent at which a driver is presumed to be impaired.

State enforcement efforts for car and truck drivers are increasingly aggressive.

In the water transportation area, there are no existing Federal regulations specifically applicable to drug and alcohol use by commercial vessel crewmen. There are, however, regulations for other jurisdictions being enforced in this area.

The U.S. Coast Guard is required by the provisions of the Coast Guard Authorization Act of 1984 to ensure that standards for determining intoxication of individuals operating vessels exist. The act prescribes civil penalties of not more than $1,000 and criminal penalties of $5,000, 1 year in prison, or both.

Legislation gives the Coast Guard broad authority to issue regulations concerning drug and alcohol use in the marine environment. We believe that a mandatory Federal standard is necessary for both alcohol and other drug use by licensed mariners aboard commercial vessels.

We are, therefore, proposing a broad-based program to monitor and reduce alcohol and drug use. This proposal would: One, provide for alcohol and drug screening to detect addicted licensed personnel; two, provide for mandatory testing for alcohol or drug use after certain marine accidents; and, three, provide for testing for reasonable cause.

We plan to issue an NPRM requesting comment on a number of issues relating to implementing such an initiative.

As is evident from this brief summary, Mr. Chairman, the Department has considerable experience in developing and enforcing regulations applicable to alcohol and drug use in all modes of transportation. It is with this background in mind that I would like to offer our comments on the legislation that you are considering today.

We are pleased that you have advanced the proposal and that we have been invited to present our views.

S. 850 would make operation of a common carrier while under the influence of alcohol or drugs a Federal offense punishable by a $10,000 fine, 5 years in prison, or both. The legislation provides that an individual with a BAC of 0.1 or more shall be conclusively presumed to be under the influence of alcohol; and that an individual shall be conclusively presumed to be under the influence of

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drugs "* * * if the quantity of the drug in the system of the individual would be sufficient to affect the perception, mental processes or motor functions of the average individual."

We would like to make several points about the provisions of S. 850, the definition mandated for alcohol impairment, the definition mandated for drug impairment, and the enforcement sanctions specified.

It is our opinion the standards quantifying impairment levels, such as BAC percentages for alcohol consumption, should be arrived at through a regulatory process rather than be fixed in Federal legislation.

You may have noted, in my summary of the Department's alcohol and drug regulations for commercial operations that where BAC for alcohol impairment is specified it is set at 0.04 percent rather than 0.10.

The CHAIRMAN. Are you just reading from your statement? I can put that in the record.

Mr. HASELTINE. OK.

The CHAIRMAN. I thought you were going to summarize it. Your 5 minutes are up. You were given notice that you had to summarize in 5 minutes. You have taken your 5 minutes and you are not half way through your statement.

If you are going to be effective before this committee, you have to do some work ahead of time and summarize your statement before you come here. We put your whole statement in the record, but then we give you 5 minutes to summarize it.

So the rest of your statement will go in the record.

Mr. HASELTINE. OK. Thank you, Mr. Chairman.

[Prepared statement and response to Senator Specter's questions follow:]

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TESTIMONY OF PHILIP HASELTINE
DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS
DEPARTMENT OF TRANSPORTATION
BEFORE THE
SENATE COMMITTEE ON THE JUDICIARY
CONCERNING S. 850

SEPTEMBER 30, 1985

Mr. Chairman and Members of the Committee:

Good afternoon. I am pleased to be here today to present the views of the Department of Transportation on S. 850, legislation to make it a federal criminal offense to operate a common carrier while under the influence of alcohol or drugs. With me is Federal Railroad Administrator John Riley.

The Department is in complete agreement with the intent and objectives of S. 850. Alcohol and drug abuse by persons involved in transportation, whether common carrier or private vehicle, present an unacceptable public safety risk. We are determined to eliminate such use in all transportation modes.

Perhaps the Department's most visible programs in this area address drunk drivers. Reducing the number of accidents, deaths, and injuries caused by drunk drivers has become a major national safety priority. You are probably familiar with the DOT's high-profile effort to support and facilitate action by state and local governments, private corporations, and local community groups, an effort that has involved everyone from members of grassroots organizations such as Mothers Against Drunk Driving (MADD) to Michael Jackson. We have been particularly concerned about teenagers who drink and drive. We believe that legislation passed last year encouraging a national uniform drinking age of 21 will be instrumental in reducing teenage fatalities and injuries resulting from alcohol-related accidents. Since the legislation was enacted, 14 states have passed age-21 drinking laws to make a total of 37 with such laws.

Drug as well as alcohol use by transportation operators in all modes is also a priority safety issue for the Department. Earlier this year, the Secretary established a Departmental Working Group to examine the problem in depth. On the Working Group's recommendation, we have initiated a research project designed to: (1) identify licit and illicit drugs that may present transportation safety problems; (2) survey the state of knowledge regarding the specific effects of these drugs on

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transportation operators; (3) review methods to detect and measure drug levels in individuals; and (4) assess the quality and limitations of available data and information. We expect this project to provide vital information for the further development of drug countermeasure programs for all modes.

Today, I would like briefly to outline some of the Department's regulations and policies governing alcohol and drug abuse in commercial transportation and then to discuss the proposed legislation in the context of our experience in this area. The Department's transportation safety regulations address alcohol and drug abuse on a mode-specific basis. Federal Railroad Administrator John Riley is here to discuss the specific provisions of the new regulations we recently issued concerning alcohol and drug abuse by railroad workers.

Air Transportation

The Federal Aviation Administration (FAA) regulations for air carriers apply to pilots, flight engineers, and other crew members. These regulations (14 CFR Part 91) prohibit anyone from acting as a crewmember while taking drugs, including prescription and over-the-counter drugs, "affecting faculties contrary to safety" or while under the influence of alcohol. Crewmembers may not work flights within 8 hours of consuming any alcoholic beverage. In addition, FAA has recently adopted a rule forbidding persons to act as crewmembers with a blood alcohol conte[illegible] (BAC) of .04 percent or higher. Failure to comply with any o[illegible] the three preceding regulatory requirements can result in revocation of a crewmember's license or FAA certification, or in assessment of civil penalties up to $1,000. Multiple criteria are needed to meet all types of alcohol-related problems. In addition, any recent conviction under federal, state, or local drug laws can lead to revocation of a license or certification. The Secretary has recently submitted legislation proposing to increase civil penalties authorized for all air carrier safety violations to a maximum of $10,000 per violation.

The FAA requires pilots to have regular medical examinations -- for commercial pilots once every year, and for airline pilots once every six months (49 CFR Part 67). If a history of drug dependence or alcoholism is discovered, FAA can disqualify the pilot. FAA also uses a motor vehicle DWI conviction as an indication of a possible alcohol or drug problem.

The FAA recently issued a notice of proposed rulemaking that would require pilots and crewmembers to submit to an alcohol or drug test at the request of a state or local law enforcement officer who has reason to suspect that the crewmember may be under

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the influence of alcohol or drugs. Refusal to take such a test would constitute grounds for revocation of FAA certification or imposition of a civil penalty. This testing requirement could facilitate enforcement of the FAA prohibitions against alcohol and drug use and could serve further to deter use by air carrier crews.

Rail Transportation

The Federal Railroad Administration (FRA) recently issued a Final Rule governing the use of alcohol and drugs by train crews, rail yard workers, and other employees in safety sensitive functions. Mr. Riley will discuss these regulations in detail.

Highway Transportation

The Federal Highway Administration (FHWA) regulations applicable to interstate truck and bus drivers (49 CFR Parts 300-399) prohibit consumption of alcoholic beverages within 4 hours of reporting to work and prohibit possession or use of DEA Schedule I controlled substances (those with the greatest potential for abuse and no accepted medical use in the U.S.) on the job. The regulations require that truck and bus drivers undergo a medical examination every two years. If a current clinical diagnosis of alcohol or drug addiction exists, a driver is disqualified to drive in interstate or foreign commerce. In addition, a driver will be disqualified for one year if he is convicted of driving while under the influence of alcohol, a Schedule I drug, an amphetamine, a narcotic drug, or derivatives of amphetamines or narcotics. Violations of the FHWA regulations can subject drivers to civil penalties up to $2,500 or to criminal sanctions.

Alcohol and drug use by drivers is a major concern of state and local governments. Thirty-nine states have established .10 percent BAC, at or above which it is illegal to drive a motor vehicle. Six states, including Connecticut, Idaho, North Carolina, Oregon, Utah, and the District of Columbia, have established .08 percent BAC at which a driver is presumed to be under the influence of alcohol. Six states, including Colorado, Maryland, Michigan, New Mexico, New York, and the District of Columbia, have established BAC levels ranging from .05 to .08 at which a driver is presumed to be impaired. State enforcement efforts for car and truck drivers are increasingly aggressive.

Water Transportation

Currently, there are no federal regulations specifically applicable to drug and alcohol use by commercial vessel crewmen. There are, however, regulations of other jurisdictions being

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enforced in this area. The United States Coast Guard (USCG) is required by the provisions of the Coast Guard Authorization Act of 1984 (P.L. 98-557) to ensure that standards for determining intoxication of individuals operating vessels exist. The Act prescribes civil penalties of not more than $1,000 and criminal penalties of $5,000, one year in prison, or both. The legislation gives the Coast Guard broad authority to issue regulations concerning drug and alcohol use in the marine environment.

We believe that a mandatory federal standard is necessary for both alcohol and drug use by licensed mariners aboard commercial vessels. We are, therefore, proposing a broad-based program to monitor and reduce alcohol and drug use. This proposal would: (1) provide for alcohol and drug screening to detect addicted licensed personnel; (2) provide for mandatory testing for alcohol or drug involvement after certain marine accidents; and (3) provide for testing for reasonable cause. We plan to issue an ANPRM requesting comment on a number of issues relating to implementing such an initiative.

S. 850

As is evident from this brief summary, the Department has considerable experience in developing and enforcing regulations applicable to alcohol and drug use in all modes of transportation. With this background in mind, I would like to offer our comments on the legislation you are considering today. We are pleased that you have advanced the proposal, and that we have been invited to present our views.

S. 850 would make operation of a common carrier while under the influence of alcohol or drugs a federal offense punishable by a $10,000 fine, five years in prison, or both. The legislation provides that an individual with a BAC of .10 or more "shall be conclusively presumed to be under the influence of alcohol" and that an individual shall be conclusively presumed to be under the influence of drugs "if the quantity of the drug in the system of the individual would be sufficient to affect the perception, mental processes, or motor functions of the average individual."

We would like to make several points about the provisions of S. 850: (1) the definition mandated for alcohol impairment; (2) the definition mandated for drug impairment; and (3) the enforcement sanctions specified.

Alcohol Impairment

It is our opinion that standards quantifying impairment levels, such as BAC percentages for alcohol consumption, should be

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arrived at through a regulatory process rather than be fixed in federal legislation. You may have noted in my summary of the Department's alcohol and drug regulations for commercial operations that, where a BAC for alcohol impairment is specified, it is set at .04 percent or above in FAA regulations rather than .10. (Our program for state drunk driving laws under section 408 of the Federal Highway Act calls for a 0.1 percent BAC per se law as applied to motorists, but several states also have more stringent presumptive BAC levels that we heartily approve.) Research has demonstrated that even small amounts of alcohol can affect judgement, coordination, peformance, and reaction time. Vision, hearing, touch, information processing, memory, reasoning and attention span may also be affected by alcohol consumption at levels less than .10 percent BAC. In the case of air transportation, moreover, the effects of alcohol on performance are accentuated by altitude since retardation of the metabolic processes of the body caused by alcohol consumption is further accentuated as available oxygen decreases.

Our assessment of the appropriate BAC percentage to include in DOT regulations involved evaluation of research results, state and local government experience, federal regulations applicable in the several modes of transportation, industry comments and suggestions, and available test methodologies. Much of this information was developed through rulemaking. We are concerned that our regulations would not be as effective in addressing thoroughly the transportation safety issues associated with alcohol use if our flexibility had been overly circumscribed by a legislatively-mandated alcohol standard. Now that standards have been established through rulemaking, we are concerned that adjusting it upward legislatively would have a negative impact on transportation safety.

Drug Impairment

We have several suggestions concerning the definition of drug impairment proposed by this legislation. First, drug impairment is very difficult to measure. Almost no research has been done correlating levels of drugs in the system with effects on human performance. Unlike alcohol, there is no established body fluid or breath content percentage for drugs above which we can presume that an individual is impaired. The fact is, in most cases, we do not know what would be "the quantity of drug in the system...sufficient to affect the perception, mental processes, or motor functions of the average individual."

The new railroad rule prohibits on-the-job use, or possession, or impairment of alcohol or any drug listed on the Drug Enforcement Administration's Schedule of Controlled

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Substances. On-the-job drug or alcohol use will be controlled by pre-employment screening, post-accident testing, and supervisory authority to take an employee off the job if there is reasonable cause to suspect impairment. An important facet of the rule is that an employee who turns himself in or is turned in by a fellow employee is eligible for rehabilitation rather than dismissal.

Second, as I am sure the Committee is aware, the lack of established dose-response relationships for drugs makes drug testing to determine impairment very difficult. Urine tests can detect recent use, but do not indicate abuse or impairment. Moreover, some drugs, such as marijuana, can be detected in urine for three to four weeks or more after ingestion, long after their impact on performance has ended. Blood tests give a better indication of the degree of performance degradation attributable to drug use, but in the absence of quantified standards, interpreting blood test results is difficult, at best. Saliva and breath tests for drug use are currently being developed, but are still in the experimental stage.

Enforcement

With regard to enforcement, we are concerned that the current lack of definitive dose-level tests that indicate impairment for most drugs will make it difficult to sustain criminal charges for common carrier operators taken out of service where there was no accident. Our principal interest is in preventing accidents by keeping an impaired operator from ever getting behind the controls of a common carrier vehicle.

Regrettably, we have not found that criminalization has proven to be a successful approach to the problem of alcohol and drug abuse by operators of commercial vehicles. In the case of railroads, for example, several states have enacted laws imposing criminal sanctions for operation of rail vehicles under the influence of alcohol. Those laws have seldom been enforced, however, and have had little, if any, impact on the problem. The Canadian Transport Commission (CTC) has had a longstanding criminal sanction for alcohol use by rail workers that carries a maximum 5-year term of imprisonment. According to the CTC, there has been only one prosecution, and the defendant was acquitted. Canadian authorities remain concerned that they may have a very serious safety problem with alcohol abuse on the railroads.

This is not to say that criminalization is in all cases ineffective. State laws making it a criminal offense to drive while intoxicated have been very effective in reducing the incidence of drunk driving accidents. There are several reasons for this. First, more states have established per se BAC levels

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for drunk driving offenses -- that is, it is illegal to drive with a BAC above a specified level and rebuttal evidence will not be considered. Second, some states have given police the authority to suspend a driver's license immediately at the scene if the BAC is above a specified level or if the driver refuses a breath test. Many states also have automatic license suspension or revocation penalties for driving while intoxicated, actions that can be taken by the state licensing agency independent of court action relating to the charge.

Although criminal penalties normally provide a stronger deterrent than civil penalties, we have reason to believe that in this particular case, the reverse is true. In our view, the civil penalty authority available for most violations of the Department's alcohol and drug use regulations, together with revocations of licenses or certifications and other administrative actions where applicable, would be a more effective enforcement mechanism than criminal penalties for the following reasons.

First, we have found that the civil penalty process and certification revocations provide the most flexibility for dealing with impaired individuals and removing them from commercial operations with a minimum of delay. Civil penalties can be imposed administratively without resort to the judicial process. Criminal law enforcement procedures can be much more cumbersome and time-consuming.

Second, with the current federal court case load at an all time high, we are concerned that alcohol and drug violations would not receive priority attention from U.S. attorneys. We would hesitate to recommend adding alcohol and drug impairment prosecutions, particularly where effective alternative enforcement sanctions already exist.

Third, we are concerned that federal enforcement resources would not be sufficent to conduct a comprehensive criminal investigation program directed at all common carriers. We rely extensively on state and local law enforcement personnel, particularly for truck and bus transportation. They are first responders to nearly all transportation accidents and can quickly assess if alcohol or drug impairment was a contributing factor. For this reason, FAA has proposed requiring air carrier crewmembers to submit to alcohol or drug tests by state and local enforcement personnel who have reason to suspect that a crewmember is under the influence of alcohol or drugs.

For routine highway surveillance, as well, state and local police and law enforcement personnel are best situated to identify

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potentially impaired truck or bus drivers and remove them from the roads. In contrast, there is no federal enforcement presence comparably situated to perform this surveillance function. Conversion of the existing DOT staff of civil investigators into a federal transportation police force would have an adverse effect on our efforts to promote transportation safety.

Finally, enforcement under proposed legislation could be hampered by the severity of the criminal sanctions and the lack of provision for employee assistance or rehabilitation programs. Most transportation vehicle operators are away from management and supervisory personnel for the majority of their work day. For this reason, those most likely to identify alcohol or drug use problems are fellow employees. In our experience we have found that those individuals are less likely to report a substance abuser to management if the sanction imposed for the problem is perceived as inordinately severe and if there is no opportunity offered for rehabilitation. The railroad industry's "Rule G," for example, which required that employees found to have used alcohol on the job be dismissed or suspended, was ineffective in detecting and deterring alcohol abuse for precisely this reason. If criminal sanctions resulted in similar problems throughout the transportation industry, the law could actually be counterproductive in terms of discovering alcohol or drug safety problems before they result in accidents.

For us, identifying individuals with substance abuse problems at a sufficiently early stage and withdrawing them from the transportation environment is the primary objective -- and the Secretary's safety mandate. Through all of our regulatory and enforcement programs, we try to detect problems before they develop into life-threatening accidents. We believe that our common goal of a safe transportation system may be better served through this approach than through one that seeks to impose punitive sanctions after an accident occurs.

I would like to reiterate, in closing, the Department's overriding commitment to eradication of drug and alcohol safety problems in all areas of transportation. With the cooperation of the Congress, state and local governments, and the industry, we can achieve this critical goal. We would be glad to work with this Committee in addressing alcohol and drug issues. We will provide status reports on the implementation and efficacy of the Department's regulations, research results and reports, and any other data and information you may require to enable you to evaluate our programs and recommend improvements. Your focus on the hazards of alcohol and drug abuse in the transportation sector will aid our efforts significantly.

That concludes my testimony. Thank you for this opportunity to comment on the proposed legislation. I will be pleased to respond to any questions you may have.

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U.S. Department of Transportation
Office of the Secretary of Transportation

Office of Assistant Secretary
400 Seventh St., S.W.
Washington, D.C. 20590

OCT 18 1985

Senator Strom Thurmond
Chairman
Committee on the Judiciary
Washington, D. C. 20510

Dear Mr. Chairman:

As you requested, Federal Railroad Administrator John Riley and I have prepared written responses to Senator Spector's questions concerning S.850, Intoxicated Drivers of Common Carriers. These are enclosed.

I want to thank you again for the opportunity to present our views on the legislation. Please let me know if I can be of further assistance. I look forward to working with you to address the very serious problem of alcohol and drug use in transportation operations.

Sincerely,

Philip Haseltine
Deputy Assistant Secretary for
Policy and International Affairs

Enclosure

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ACCIDENTS CAUSED BY ALCOHOL OR DRUG USE BY OPERATORS

QUESTION: What is the incidence of accidents to property and personal injury from common carrier accidents resulting from drugs or alcohol?

ANSWER:

1. RAIL

In the 10-year period 1975-1984, there were 48 rail accidents attributable to errors of alcohol- and drug-impaired employees. These accidents resulted in 37 fatalities, 80 injuries, and $20.4 million in damage to railroad property. (Damage figures are not available for damage to lading, damage to non-railroad property, or emergency response costs.) One accident resulted in the release of hazardous materials and evacuation of an entire community of 2,700 people, and necessitated $13.8 million in environmental clean-up costs.

2. HIGHWAY

The Department's Bureau of Motor Carrier Safety (BMCS) requires interstate motor carriers to report accidents that involve death, injury, or at least $2,000 in property damage. Of 37,000 interstate truck accidents reported to BMCS in 1984, 223 were reported to be alcohol-related. These 223 accidents resulted in 24 fatalities and 231 injuries.

NHTSA analyzes fatal accident data from 15 states that routinely test fatalities for alcohol. In 1983, (most recent data available), these 15 states reported that 12.8 percent of fatally injured drivers of heavy trucks (gross vehicle weight greater than 26,000 lbs) were intoxicated. The statistics include inter- and intrastate trucks.

The Department has very little data on the incidence of drug involvement in highway accidents.

3. AIR

No accident involving U.S. air carriers has been attributable to alcohol or drug use by pilots or crewmembers in over 10 years.

4. MARINE

Although not specifically identified as a major causal factor in commercial vessel losses or damages, alcohol use has had an impact on safety. From 1981 to 1983, 37 deaths were reported to be alcohol-related. Casualty records do not identify drug-related casualties. During the same period, however, 84 individuals were charged in license suspension and revocation proceedings with drug-related offenses.

STATE ALCOHOL AND DRUG USE LAWS

QUESTION: Why are state laws governing use of drugs and alcohol while operating a motor vehicle insufficient for prosecution of persons operating common carriers?

ANSWER:

In general, state criminal codes provide adequate sanctions for this purpose, particularly in the highway mode where all jurisdictions have directly applicable

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provisions and state enforcement is most active. Where a fatality or substantial damage to the property of members of the public is involved, state authorities often proceed even against railroad employees (who operate on private rights-of-way).

The Department of Transportation is working with the states to ensure that sanctions for driving while intoxicated are firm and are rigorously applied. However, it should be noted that, for certain potential offenders, the threat of license suspension or revocation--i.e., an administrative sanction--may be more effective than the threat of incarceration, because of the greater certainty that it will be applied to the first offense.

In general it can be said that it is not any lack of standards or sanctions that permits the alcohol and drug problem to persist. Even where potential sanctions are quite severe, this conduct will not be deterred unless we have adequate means to detect violations on a routine basis and apply available sanctions with reasonable certainty. Through initiatives such as the recent FRA rule, the Department hopes to increase our capacity for detection and deterrence of alcohol and drug-abusing behaviors in the transportation environment.

It is worthy of note that, in all modes of transportation, impaired operators are the most frequent victims of the fatal accidents that they cause. Even the threat of this self-imposed, ultimate sanction is sometimes not effective in deterring alcohol and drug use.

CRIMINAL PENALTIES FOR CARRIERS

QUESTION: Do you believe that criminal penalties also would be appropriate for the carrier itself, where there is demonstrated a failure to supervise which would amount to criminal negligence?

ANSWER:

Carriers should be subject to sanctions when accidents result from carrier violations of relevant safety standards or demonstrated failure to supervise and enforce requirements among their own employees. The federal regulations already include a combination of civil penalties, and criminal sanctions applicable to carriers for violations of the alcohol and drug prohibitions. In addition, carriers face substantial liabilities in the event of transportation accidents of any kind. It is unlikely that the imposition of federal criminal fines against the corporation would add substantially to deterrence, given the tort liability and penalty authorities already present, and the difficulty associated with prosecuting a criminal case of this nature.

Demonstrating "failure to supervise" leading to a charge of criminal negligence by common carriers could be difficult. Most transportation vehicle operators work in locations removed from management and supervisory personnel for most of the work day. In these situations, identification of employees with alcohol or drug problems is most likely to be accomplished through self-reporting or reports of fellow employees. Our detection and enforcement program is increasingly focused on pre-employment screening, periodic testing and medical exams, post-accident testing, and rehabilitation opportunities. While we agree that those responsible for accidents involving alcohol or drug use by operators should be penalized to the maximum extent possible, our programs are designed to identify and correct safety problems before accidents occur. Criminal penalties focus on after-the-fact punishment. They can serve as a deterrent, but may not be helpful in solving alcohol and drug problems at an early stage.

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The CHAIRMAN. Mr. John H. Riley, Federal Railroad Administration.

Mr. RILEY. Thank you very much, Senator. I am joined on my right by Grady Cothen, who is FRA's expert on the subject of alcohol and drug abuse so we can answer any questions you might raise.

STATEMENT OF JOHN H. RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, ACCOMPANIED BY GRADY COTHEN

Mr. RILEY. Senator, the issue of alcohol and drug use on the railroads was literally the first issue I dealt with on the morning that I was sworn in as Administrator, November 17, 1983.

We went out over the succeeding months and held public hearings in five regions of the country so we could draw on the opinions not only of the Washington professionals, but of the men and women who work out in the field in all five regions of the country; and they led us to certain conclusions.

At the end of those hearings, we became convinced that the problem of alcohol and drug use is probably no greater or lesser in the railroad industry than it is in any other basic industry.

The difference in the railroad industry lies in the nature of public exposure. A lawyer who has a drinking problem may commit malpractice; a machinist could lose a finger in the shop; but a person operating a railroad train under the influence of alcohol or drugs has an almost unlimited capacity to kill or injure fellow employees, passengers, and any member of the public that might be within the scope of the train's service.

It led us to conclude that the problem had to be resolved with regulations that were not crafted as a political compromise, but regulations that were crafted to be our best judgment on the solution to the problem; and they pursue two objectives.

The first is the recognition that the public has an absolute right to be protected from the consequence of alcohol and drug use in the workplace. The second is the recognition that alcohol and drug use is very much a human problem. It is one that affects human beings and is often a symptom of another problem.

The program, if it is going to be effective, has to recognize that. That is why we need a strong voluntary program to go along with the Federal rule.

One is not a substitute for the other. A rule can detect, a rule can remove an employee from service, and in the case of a nondependent user it may even deter. But a rule cannot foster peer intervention, it cannot lead to early identification or create effective assistance programs for those who need them.

Now, against that background, Mr. Chairman, the rule has six provisions. No. 1, a Federal rule G which prohibits railroad operating employees from possessing, using or being under the influence or alcohol or drugs in the railroad environment.

Now, this is largely—and, Mr. Chairman, I will say this on the record—a statement of principle. All railroads have rule G's. The problem has not been lack of a rule.

The problem in our industry has been lack of the ability to test—railroads have not had the authority to test so that they could de-

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termine violations with certainty—and, second, lack of any real incentives for employees who have a problem to step forward and try to get help before they kill themselves and fellow employees.

So the rule went beyond the simple statement of a Federal rule G. I will also add that we have a second provision making certain technical changes to accident-reporting rules so that we require railroads to report any evidence of alcohol or drug use in an accident environment, and so that we require railroads to make reasonable inquiry into that in all accidents.

But to get to the meat of the rule, we also have a provision of mandatory postaccident testing. Today, FRA does not have the authority to test when a railroad accident takes place. We will have it beginning November 1.

In the postaccident testing provision, we require alcohol and drug testing of all operating employees after accidents that involve fatalities, hazardous material releases, and accidents that are impact accidents that cross a certain damage threshold.

This is predicated on our belief that there is a clear public interest in determining the true cause of certain major accidents. I don't believe, Mr. Chairman, that this will be a deterrent because most people don't expect to be in an accident, but it will help us in weeding out problem cases.

I might add, Mr. Chairman, that the first three provisions were the original NTSB recommendations. I commend NTSB for getting out in front on this; but I believe if we had stopped there we would not have addressed the real gist of the problem. So we added three more provisions.

First, preemployment drug screens. Every railroad operating employee must take a drug screen as part of his preemployment physical. We don't believe it is too much to ask a potential railroad employee to show up clean on the date of their preemployment physical.

Second, we give the industry discretionary testing authority; this provision is the heart of the rule. We allow, upon reasonable suspicion, a railroad officer to test an employee either for alcohol or drug impairment.

The present system, which does not give testing authority, creates a problem that can't be solved. Supervisors, if they cannot test to determine a violation with certainty, are hesitant to levy allegations of alcohol or drug use based simply on observation.

It becomes their word against the employees; it goes into arbitration, goes before a neutral; and become a process that it bargained out at the collective-bargaining table. The difficulty is that no one sits at that collective-bargaining table who represents only the public, and it is clearly in the national interest to allow testing so that we can determine with certainty whether an employee has violated the law.

I have been asked two or three times this week, Mr. Chairman, whether there is any truth to a magazine article which appeared last week that pointed out that because certain labor officials had objected to the testing provision, that FRA is pulling back.

I can tell the committee, absolutely not. Our objective here was not to create a political compromise, but to protect the public.

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The final provision of the rule, Mr. Chairman, is the bypass provision. This is preventive maintenance.

We often hear about the conspiracy of silence in the railroad environment and it's really just human nature. The pattern is not to have a whole crew of employees who drink or use drugs; it's to have one crew member that has a problem and the others are concerned about him.

But they will not use their peer pressure to make him step forward and turn himself in or turn him in if the only sanction is dismissal. So what we do is give a one-time right—and I want to emphasize that; a one-time right—to railroad employees to come forward and say, "I've got a problem. I'm chemically dependent."

They will receive treatment. They must put their life in the hands of the employee assistance counsellor. At the point where they complete the treatment and are certified by the medical officers as able to resume service, the job will still be waiting for them: they can go back into service.

Let me add, however, that this right cannot be requested by an employee who is impaired or an employee who is on duty. In other words, as the testing official is coming down the train with the breatholyzer, you can't say, "I elect bypass."

What we're trying to do is to create an interplay between testing and bypass. People don't request bypass rights today, Mr. Chairman, because they know, in today's railroad environment, they will not be caught. There is no ability to test.

As of November 1, railroad employees with problems can assume not only that they can be caught, but that they, in fact, will be caught. We believe that that will drive people into seeking help in advance.

This is the most effective mechanism we could provide to get people out of the system before they kill themselves and hurt others. It is not a reactive provision, it's proactive.

Mr. Chairman, I will leave my testimony at that level and be glad to answer any questions that you have on the railroad environment; and, of course, Phil Haseltine will be glad to answer any questions on the Department's overall positions or other modes.

The CHAIRMAN. I have a few questions here for you and Mr. Haseltine, both.

Mr. Haseltine, under current law what potential penalties would apply to the carrier and responsible parties if an engineer, bus driver, or pilot operated their common carrier while under the influence of alcohol and caused an accident resulting in a fatality or injury?

Mr. HASELTINE. The penalties vary from mode to mode, Mr. Chairman. Let me see if I can find a list and go through them with you.

In the case of air carriers, we are talking about a $1,000 civil penalty per infraction plus loss of their certification, which means loss of their job, their ability to serve as a crew member.

In the case of the motor carriers, we have the possibility of both civil and criminal sanctions in place due to legislation that Congress passed last fall.

In the rail area, I think Mr. Riley has already indicated what the levels are there.

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So we have some variance from mode to mode; but, in any case, we have a minimum of a $1,000 civil fine, loss of the ability to earn a livelihood, and in some cases the potential of criminal sanctions as well: In the case of motor carriers and mariners.

The CHAIRMAN. Suppose an engineer under the influence of drugs or alcohol operates a train and kills a dozen people. What's the penalty?

Mr. HASELTINE. I would think there are a broad range of penalties in that instance up to criminal prosecution by the local authorities under a number of——

The CHAIRMAN. I'm speaking about the Federal element.

Mr. HASELTINE. John.

Mr. RILEY. There isn't a criminal liability at the Federal level.

The CHAIRMAN. No criminal liability at all.

Mr. RILEY. Not at the Federal level.

The CHAIRMAN. If he kills 100 passengers, there is no criminal liability at all.

Mr. RILEY. It is at the State level, it is not at the Federal level.

The CHAIRMAN. Mr. Haseltine, do you feel that the proposed Department of Transportation regulations will be an effective deterrent when they only impose civil fines against the particular carrier involved and do not address the employee who was at fault and operating the carrier? If so, why?

Mr. HASELTINE. Yes, they do, and I think they certainly do address the employee involved. Again, we are talking about substantial financial penalties plus the revocation of certification, which literally enables the individual to engage in his or her livelihood. Without the ability to have an FAA certification, that person cannot operate as a crew man. The same goes for other modes as well.

So we believe very strongly that the civil penalties that are in place are, in fact, adequate.

Mr. RILEY. Senator, if I can add a comment, just on the railroad industry as opposed to the other.

The thrust of our rule is to get the employee out of the system before he has the accident. That is why, as of November 1, there will be testing.

The CHAIRMAN. I agree with your thought and commend you for it, but suppose you don't get him out and he kills 100 passengers on that train. Then what do you recommend be done?

Mr. RILEY. What the current system does in the case where the accident takes place—the criminal sanctions are not at the Federal level, they are at the State level—the civil sanction at the Federal level would levy, in our case, a fine against the carrier for violation of the rule.

The CHAIRMAN. I understand all that, but why shouldn't there be some criminal penalties at the Federal level if an employee is operating in interstate commerce for his employer, a common carrier?

Mr. HASELTINE. We simply find them not necessary in terms of deterring the problem. Again, as Administrator Riley said, that's what——

The CHAIRMAN. Not necessary if he kills 100 passengers on a train? Say he's drunk on a train, 100 passengers get killed. You don't think criminal penalty is necessary at the Federal level.

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Mr. HASELTINE. I think, in that instance, there's a high likelihood that the individual would be tried for homicide under State statute.

The CHAIRMAN. You don't agree with Mr. Sweedler, then, from the National Transportation Safety Board, do you?

Mr. HASELTINE. In some areas we agree with them, in some areas we do not.

The CHAIRMAN. He thinks they are necessary. So you disagree with him.

In the new regulations that you have I believe they only apply to self-enforcement by the carriers, don't they?

Mr. RILEY. In ours? The carrier is not only authorized, but they are required to take certain acts, Senator. I think the issue on deterrence comes down to whether a Federal deterrent is more effective than a State deterrent.

And, second, whether it is more effective than a civil penalty deterrent which tends to fix liability in litigation.

A $2,500 Federal fine doesn't sound like very much on its face, but the levying of that fine will fix liability in multi-million-dollar litigation. Once the accident takes place, anything we do to the employee or the carrier is after the fact.

I completely share the Senator's view that we have to create deterrents in advance and ways to get people out of service that have a problem. That we have tried to build our rules around.

The CHAIRMAN. Between January 1975 and September 1983, there were at least 10 accidents reported by the railroad carriers and not investigated by the FRA even though the reporting railroads used code 510 to indicate alcohol or drug impairment as a primary or contributing cause of the accident.

Why should the FRA choose not to investigate when it is obvious that alcohol or drug use was involved?

Mr. RILEY. Senator, the answer to that is I would have to answer that individually for each instance. If the committee will provide me with each instance, I'll be glad to provide that to the committee.

The CHAIRMAN. I'll have the staff to provide you with those and I would like you to answer for the record.

Mr. RILEY. Be happy to do it, Senator.

[Aforementioned was subsequently supplied for the record:]

Our final rule document lists ten (10) train accidents involving alcohol or drugs that were not investigated by FRA (table 3). These accidents were investigated by the railroads and reported to FRA in accordance with our mandatory accident/incident reporting requirements (409 CFR Part 225). The events in question are lower damage accidents that did not involve a direct and immediate threat to the public. Only two involved injuries to employees, and most occurred before FRA was actively considering a regulatory program.

During the period reflected by the table, the nation's railroads experienced as many as 11,000 train accidents per year. Because of the improvements in rail safety effected over the past few years, we now experience fewer than 4,000 train accidents per annum; and we believe that further improvement is possible. Nevertheless, FRA is not able to investigate all accidents of lesser magnitude while still maintaining compliance efforts targeted at the prevention of life-threatening accidents.

Let me add that we do work cooperatively with the NTSB to investigate those major accidents that NTSB selects for investigation, which include all train accidents that produce fatalities. Our effects are complementary and coordinated. FRA also investigates all employee facilities, as well as train accidents that result in significant releases of hazardous materials, numerous injuries or substantial property

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damage. Other accidents may be selected for investigation based on our need for specific information bearing on enforcement or regulatory policy.

As a general matter, routine investigation of the hundreds of lower damage accidents—most of which do not involve injury—would not necessarily add a material increment of information to that which can be gathered through our accident/incident reporting system, investigations of more significant accidents and fatalities, and our compliance inspections on the railroad properties.

Deploying Federal investigators to the accident scene is an option that we exercise frequently, but it is not the only means of gathering better information about the role of human performance in these accidents. Our new final rule will strengthen the accident/incident reporting system by requiring the railroads to make specific inquiry into possible alcohol and drug involvement in train accidents. At the same time, we will improve the reporting system itself to gather more precise and complete data.

Further, the final rule will require post-accident toxicological testing after about 200 significant accidents each year, including all reportable collision-type train accidents that involve personal injuries. In crafting this requirement, we have focused on the kinds of accidents that are of greatest interest with repect to public safety and those accidents that most often involve human failure.

Because we now have in place regulations that specifically address alcohol and drug use by railroad employees, we will also intensify our field enforcement activities related to this important dimension of human performance. We have already begun supplementary training of our field safety personnel to improve their ability to evaluate the adequacy of railroad programs addressing this problem.

The CHAIRMAN. Under the proposed regulations, a railroad carrier whose employee violates the prohibition against on-the-job alcohol or drug use is subject to civil penalties while the offending employee is accountable only to the employer, the railroad carrier. This legislation specifically holds the person that causes the accident responsible.

Doesn't this approach offer a far more effective deterrent to such conduct? Mr. Riley.

Mr. RILEY. An employee who causes an accident through actions that would leave him liable for criminal penalties would be liable for criminal penalties under State law in almost every case; and I think it's a State/Federal tradeoff.

To the extent that is going to be a deterrent, it is a deterrent.

Senator, we recognize and we believe that once the accident has taken place, in effect the cat is out of the bag. We've sought to build into the system our effective deterrents and the best deterrent is the certainty of detection: the ability to detect and take a man out of service.

That is the thrust of our proposal.

The CHAIRMAN. I don't know of any cases where the States have brought criminal prosecutions against railroads. Do you?

Mr. RILEY. There are several, I believe.

Mr. COTHEN. Mr. Chairman, there were State-level prosecutions after the hazardous materials accident in Livingston, LA, which involved evacuation of 2,700 persons. People were prosecuted and I believe time was served.

The same thing is also true in the recent accident at Sullivan, IN, which you also see in our final-rule document, where there were fatalities involved. In that case, criminal prosecutions were brought for reckless homicide and, again, convictions were had.

So this is not new. Historically where there have been fatalities and where it can be demonstrated that there was reckless conduct on the part of the employee involved, there have been State-level prosecutions.

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So that avenue is still available.

Mr. RILEY. Senator, if I could raise an issue for the committee to consider—and I raise this not in derogation of the proposal, but as an issue to consider in how you draft and weigh it—we have been attempting to create a proactive program by giving individual employees who have a problem the right to step forward and say, "I've got a problem," and step out of service by putting them through treatment.

The CHAIRMAN. I understand. You stated that.

Mr. RILEY. I have a concern—and this is something the committee may weigh——

The CHAIRMAN. I think that's fine for the railroads to encourage them to come forward. If you have an alcohol problem or a drug problem, I think you have a duty to do that.

On the other hand, suppose it's overlooked or, anyway, suppose the employee violates it and kills, as I said a while ago, 100 passengers, what are you going to do about that?

Mr. RILEY. My concern, Senator, is that if the statement of the employee—that he does want to come forward and cure the problem before he has an accident—would subject him to criminal penalty, I'm not sure he will do it. That is what my concern is.

There may be a way to approach that in the legislation. I simply want to raise it to the committee to weigh as you look at your language in your drafting.

The CHAIRMAN. I sued railroads and I defended railroads, but I don't know of any case where there has been a prosecution of a railroad employee for any accident. It's just been tort suits brought by individuals, generally.

I'm trying to prevent people from being injured or killed. If a railroad takes every step it can, I think it has met its responsibility; but suppose the employee gets by somehow? He goes and operates that train with 1,000 people on it, 100 of them get killed.

You don't think anything ought to be done with him, criminally?

Mr. RILEY. Senator, my own view would be that if an employee operating a train kills someone while under the influence of alcohol, he is at least liable for manslaughter charges, certainly.

The CHAIRMAN. Well, he can be sued himself, of course, for negligence. The railroad could also be sued.

How are you going to prevent these things? How are you going to put an end to it?

If he knows he can be prosecuted and tried for murder or tried for manslaughter, it might have a more deterrent effect on him, wouldn't you think?

Mr. RILEY. Well, I would certainly agree with the statement, Senator. I think the question is, I believe—and the committee may well correct me on this because I have not looked at every State and I will tell the committee that in advance—that an employee of a railroad who causes a fatal accident by operating that train under the influence of alcohol would, in fact, be liable for manslaughter prosecution under current law.

What we have attempted to do is to go beyond the deterrent.

The CHAIRMAN. You say you think he could be prosecuted now?

Mr. RILEY. Under current law.

The CHAIRMAN. At the Federal level?

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Mr. RILEY. At the State level, not at the Federal level.

The CHAIRMAN. I'm talking about the Federal level.

Mr. RILEY. It cannot be done at the Federal level.

The CHAIRMAN. This is based at the Federal level. We are not talking about State level.

Mr. RILEY. It cannot be done at the Federal level now to the best of my knowledge.

The CHAIRMAN. There have been 29 employee fatalities between January 1975 and July 1982 involving alcohol or drugs. Had these men been subject to S. 850, they might be alive today.

What I said about railroads, the same thing applies to buses, same thing applies to pilots on airplanes. Suppose a pilot goes on a plane under the influence of drugs. What can a passenger do?

He's up in the air 10,000 feet. His pilot is flying under the influence of alcohol or drugs. What protection does he have?

If that pilot kills 100 passengers on that plane, don't you think he ought to be prosecuted if he's under drugs or alcohol?

Mr. HASELTINE. I think, as much or more so than in the rail case, Senator, clearly we have to take every step possible to make sure that the pilot doesn't board the aircraft under the influence of alcohol or other drugs.

It's less likely—unfortunately, given the characteristics of air crashes—that the pilot is going to survive to be prosecuted, quite frankly; but in the event that the pilot survives, it's still a possibility under State statute.

Mr. RILEY. Whether the penalty is civil or criminal, you are dealing with punishment as much as you are deterrent. It seems to me that if you are going to get the man out of the plane or out of the train, the only really effective mechanism is to test him rigidly and strictly, and to provide incentives for him to step forward if he has a problem.

My concern from the railroad environment is the interplay between criminal penalties and the incentive on bypass. That is the issue I want to raise to the committee.

An individual will not come forward and say, "I have a problem, don't make me run that train," if he believes that by doing that he's going to be prosecuted. What I ask the committee to weigh is how we can maintain the integrity of that incentive.

I have no quarrel whatsoever with the statements of principle that the chairman is making. This is the interplay between our rule and criminal penalty that is of some concern to me.

On the testing side, the testing and the criminal penalty are two entirely different things. The testing is what you do before an accident, penalties are what you assess after it.

What we want to do with our rule is to maximize the chance that the employee is going to be caught before he has the accident through testing and then maximize the incentive for an individual to step forward and seek help through bypass.

Again, the criminal issue does not affect the testing side. It may affect the bypass side.

The CHAIRMAN. How do you enforce your rule?

Mr. RILEY. We enforce our rule through penalties levied on the carriers and through emergency orders. The emergency order

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power is inherent in the Administrator, and the civil penalty process is presently the same as civil penalties for all other violations.

Frankly, Senator, we are weighing whether our maximum civil penalty amount is high enough. We will have some comment on that before the rule goes into effect.

My experience has been that it is not the dollar amount of the penalty that creates the disincentive because once we assess a dollar penalty we are fixing liability in the litigation context. Really, a $2,500 penalty may be a $50 million penalty.

So it is less the dollar amount of the fine than the fact that we assessed it and the certainty of apprehension.

I can only speak for the railroad environment, Senator. I cannot speak for any of the other operating environments.

The CHAIRMAN. On February 4, 1977, a train in Chicago struck the rear of another train in Chicago's famed Loop. The four lead cars of one train overturned throwing some elevated structure to the street.

One end of each of the 2 wrecked cars of the other train derailed; 11 persons were killed, 266 persons injured. The property damage was over $1 million.

The Chicago police found marijuana cigarettes in the motorman's bag and toxicological tests found that he had TAC in his urine.

You don't think he ought to be punished?

Mr. HASELTINE. Very clearly, we think he ought to be punished, Mr. Chairman.

The CHAIRMAN. But not prosecuted. Fine him $1,000 or something like that, but not prosecute him.

Mr. HASELTINE. I believe, in that instance, there was a prosecution.

In the case of mass transit, we're not sure. I guess we would, frankly, have to look at the extent to which it could be construed as interstate commerce: whether it should be dealt with along with common carriers in clearly interstate commerce modes.

But very, very clearly, as with each of these other situations, we are committed initially to prevent them and, in the event that they are not prevented, certainly strong sanctions are appropriate.

Mr. RILEY. Senator, I'm not saying that that man shouldn't be prosecuted. He certainly appears to have violated at least the narcotics laws if not both State and local laws on manslaughter.

But you raise a very important point that I want to put on the record here. Our rule does not reach urban mass transit trains such as that one.

The Federal Railroad Administration has authority only over interstate freight and passenger, and over commuter trains. That point was made in Mr. Sweedler's testimony that is worth noting.

The CHAIRMAN. The interstate is what we are after in this bill.

Mr. RILEY. Yes.

The CHAIRMAN. October 20, 1976, a ferry was maneuvering on the Mississippi River from one bank to the other. A tanker upbound attempted too late to reverse its engine. It struck and capsized the ferry, 72 passengers and the crew of 5 were killed.

A whiskey bottle was found in the wheelhouse of the ferry. The level of alcohol in the boatmaster's body contributed to the ferry

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boatmaster's impaired judgment. The boatmaster's BAC was 0.09 percent.

Despite that relatively high level, he would not necessarily be presumed to be legally impaired by current legislation.

Now, in the early morning hours of December 2, 1982, about 4 miles east of Los Banos, CA, a trucktractor, semitrailer loaded with a military cargo of 18 surface-to-air missiles drifted off the right edge of the State Route 152, struck and sheared a utility pole, and overturned on the right side.

It came to rest 120 feet from its exit point from the highway. A bundle of nine missiles broke loose and spilled on the ground. Fortunately, very fortunately, no fire ensued.

The truck driver admitted to investigators he had been drinking alcoholic beverages and falling asleep while driving. He pleaded guilty to reckless driving. They got him under State law.

But if he's in interstate commerce, under this bill they could have punished him for that.

January 13, 1977, Japan Airlines, DC-8 cargo flight crashed shortly after takeoff at Anchorage International Airport. Three crew members and two cargo handlers both died. The aircraft was destroyed.

The Board determined that the probably cause was a stall caused by the pilot whose blood alcohol concentration may have been as high as 0.3, nearly three times the legal intoxication limit on our highways and seven times the limit FAA has set as a presumptive limit in aviation.

Incredibly, after boarding his plane, this pilot got lost on the taxiway and went to the wrong runway, and no one including his crew intervened to stop him.

It seems to me with the prevalence of alcohol and drugs today we have to take steps to protect the public: take steps at the State level and take steps at the National level. The reason we do at the national level is because so much transportation is interstate.

If it were not interstate, the States could handle it all. It seems to me we have to exercise every possible course we can pursue to protect the public.

Anything else either one of you gentlemen want to add?

Mr. RILEY. Only one technical point that came out of a question, which I thought was a good one, that the chairman asked to the last witness.

Our rule does not tolerate any presence of alcohol. We simply switch to a presumption against the employee at 0.04. We recognize that detection capacity has some limitations.

A 0.02 level is within the margin of error of the current detection equipment. So the debate has tended to be, do you set the impairment presumption at 0.03 or 0.04? We have set it at 0.04, but that does not mean a railroad cannot and is not fully empowered to discharge an employee for a 0.03.

Of course, a 0.1 is an intoxication level, not an impairment level; and it's outrageous to suggest that 0.1 should be tolerated in the railroad system.

The CHAIRMAN. Well, under civil penalties I guess that's reasonable; but if you have a criminal penalty like we have here, then we felt the punishment here should be based on 0.1.

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In other words, you don't allow any alcohol?

Mr. HASELTINE. Absolutely.

The CHAIRMAN. For a civil penalty, that's fine.

Mr. HASELTINE. I agree with that.

The CHAIRMAN. That's fine. I commend you for that; but to prosecute a man, put him in jail or put his life in jeopardy, then we felt that we ought to allow a little more flexibility and make it 0.1.

Mr. HASELTINE. Well, Senator, I don't disagree with that at all. My comment is just to the effect of our civil rule: a very different environment.

The CHAIRMAN. I'm glad you have what civil penalties you have, and you keep those. We want to help you by adding a criminal penalty to it, too, in interstate commerce.

Thank you very much for your presence.

Mr. RILEY. Thank you, sir. We appreciate the committee's active role on this.

The CHAIRMAN. The hearing is adjourned.

[At 3:17 p.m., the committee was adjourned.]

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